SCHEDULE A—COMPUTATION SCHEDULE [illegible] DISTRICT TAXES AND USE TAX

PLEASE READ INSTRUCTIONS BEFORE PREPARING THIS SCHEDULE. REVERSE CARBON BEFORE MAKING ENTRIES

This schedule is to be completed for District Sales [illegible] (1) you are engaged in business in a transit district imposing such taxes and, or (2) you are engaged in business in a transit district and are required to collect the [illegible] sales or storage or use tax subject to the district use tax.

A1 Amount on which LOCAL Tax applies (Enter amount from Line 16 on the reverse side) $

A2 DEDUCT—Amount of sales made from locations outside transit districts and delivered to a point not in a transit district $

A3 Amount of transit district transactions (Line A1 minus Line A2) $

* San Francisco Bay Area Rapid Transit District

** Santa Clara County imposes both a ½% Traffic Authority tax and a ½% Transit District Tax for a total of 1% Transactions Taxes and Use Tax

ALLOCATE TOTAL ON LINE A3 TO PROPER TRANSIT DISTRICT(S) ON LINE A4

	DISTRICT						
	BART* (In the counties of Contra Costa and San Francisco Counties)	MARTA (In Fulton County)	SANTA CLARA COUNTY ** TRAFFIC AUTHORITY a	SANTA CLARA COUNTY ** TRANSIT DISTRICT a	SANTA CRUZ COUNTY a	LOS ANGELES COUNTY	
A4 Enter amount from Line A3 allocated to the proper transit districts							
A5 ADD—Other DISTRICT Tax adjustments (See instruction A5)							
A6 TOTAL (Line A4 plus Line A5)							
DEDUCT EXEMPT TRANSACTIONS See instruction A7							
A7 Sales of property shipped to a point outside the district for use elsewhere in California							
A8 Sales made under a fixed price contract or a fixed price lease executed prior to the effective date of the DISTRICT Tax							
A9 Other exempt transactions or adjustments							
A10 Total Transactions Exempt from the DISTRICT Tax (Lines A7 through A9)							
A11 Amount on which the DISTRICT Tax applies (Line A6 minus Line A10)							
A12 Amount of ½% DISTRICT Tax (Multiply amount on Line A11 by .005)							
A13 Amount of ½% Tax paid to other Districts (See instruction A13)							
A14 TOTAL TRAFFIC AUTHORITY TRANSIT DISTRICT TAX (Line A12 minus Line A13)							

On reverse side enter on line from Line A14, above on Line 18 Block a(BART) b(MCT) c(CCTA) d(SCCT) e(SCMT) f(LACT)

SCHEDULE B—DETAILED ALLOCATION BY COUNTY OF 1% UNIFORM LOCAL SALES AND USE TAX

PLEASE READ INSTRUCTIONS BEFORE PREPARING THIS SCHEDULE. REVERSE CARBON BEFORE MAKING ENTRIES.

The 1% uniform local sales and use tax on retail sales of merchandise (not involving installation, made at your permanent place of business in California or local use tax on property shipped to this state from outside California and used at this place of business, should be entered on Line B2 below the county schedule. Enter the local tax on all other transactions in Column C of the schedule after the name of the county where the sale or use occurred.

A COUNTY OF TRANSACTION	B CODE	C AMOUNT OF 1% LOCAL TAX	A COUNTY OF TRANSACTION	B CODE	C AMOUNT OF 1% LOCAL TAX	A COUNTY OF TRANSACTION	B CODE	C AMOUNT OF 1% LOCAL TAX	A COUNTY OF TRANSACTION	B CODE	C AMOUNT OF 1% LOCAL TAX
ALAMEDA	01		KINGS	16		PLACER	31		SIERRA	46	
ALPINE	02		LAKE	17		PLUMAS	32		SISKIYOU	47	
AMADOR	03		LASSEN	18		RIVERSIDE	33		SOLANO	48	
BUTTE	04		LOS ANGELES	19		SACRAMENTO	34		SONOMA	49	
CALAVERAS	05		MADERA	20		SAN BENITO	35		STANISLAUS	50	
COLUSA	06		MARIN	21		SAN BERNARDINO	36		SUTTER	51	
CONTRA COSTA	07		MARIPOSA	22		SAN DIEGO	37		TEHAMA	52	
DEL NORTE	08		MENDOCINO	23		SAN FRANCISCO	38		TRINITY	53	
EL DORADO	09		MERCED	24		SAN JOAQUIN	39		TULARE	54	
FRESNO	10		MODOC	25		SAN LUIS OBISPO	40		TUOLUMNE	55	
GLENN	11		MONO	26		SAN MATEO	41		VENTURA	56	
HUMBOLDT	12		MONTEREY	27		SANTA BARBARA	42		YOLO	57	
IMPERIAL	13		NAPA	28		SANTA CLARA	43		YUBA	58	
INYO	14		NEVADA	29		SANTA CRUZ	44				
KERN	15		ORANGE	30		SHASTA	45				

B1 Total local tax for all counties listed above $

B2 Local tax on sales made and merchandise consumed at your permanent place of business in California. (Do not include any tax allocated to the above counties) Tax Area Code Board Use Only $

B3. Total local tax liability (Line B1 plus Line B2) This total tax must agree with Line 17 on the reverse side. $

BT-401-ACJ BACK REV. 19 (1-86)

BEST AVAILABLE COPY

* * *

[TESTIMONY OF WALTER SHAFFER]

[212] Q MR. SHAFFER, WAS, DURING THE PERIOD IN ISSUE, AND IS A STANDARD OPERATING PROCEDURE OF THE STATE BOARD OF EQUALIZATION TO ALLOCATE MAIL-ORDER SALES FROM OUT OF STATE FOR BRADLEY BURNS' LOCAL SALES AND USE TAX PURPOSES BY FORMULA AND NOT REQUIRED SEGREGATION BY THE SELLER AS TO EACH LOCAL TAX UNIT?

A YES, THAT'S THE CASE.

Q IS IT ALSO THE BOARD'S, AND WAS IT DURING THE PERIOD IN ISSUE THE BOARD'S PRACTICE TO APPROVE IN ADVANCE AT THE REQUEST OF TAXPAYER'S [sic] SUMMARY METHODS OF REPORTING FOR SALES AND USE TAX PURPOSES INCLUDING LOCAL, TO AVOID THE BURDENSOME RECORD-KEEPING AND ACCOUNTING PRACTICES?

A YES, WE HAVE THAT POLICY.

MR. GOBAR: NO FURTHER QUESTIONS.

THE COURT: YOU MAY CROSS-EXAMINE.

CROSS-EXAMINATION

BY MR. GORE:

Q MR. SHAFFER, AS TO THESE POLICIES, WHICH YOU'VE DESCRIBED OF TAKING SOMETHING OTHER THAN REGULATIONS AND STATUTES REQUIRE AT THE DISCRETION OF THE BOARD?

[213] A WELL, I'M NOT CERTAIN I UNDERSTAND THE QUESTION.

THE COURT: WHICH CATEGORY ARE YOU REFERRING TO, MR. TREEBY?

BY MR. TREEBY:

Q THE LAST QUESTION, THE LAST QUESTION THAT YOU ANSWERED INDICATED THAT THERE WERE CERTAIN CIRCUMSTANCES IN WHICH YOU WOULD ACCEPT LESS THAN WHAT THE STATUTES AND REGULATIONS REQUIRE BY AGREEMENT OF THE BOARD.

I SIMPLY ASKED, IS THAT AT THE DISCRETION OF THE BOARD?

A YES, IT IS. YES, THE BOARD – THE BOARD'S POLICY IS TO WORK WITH TAXPAYERS TO ELIMINATE PROBLEMS WHERE THEY BECOME REAL BURDENSOME.

Q BUT THAT IS TOTALLY AT THE DISCRETION OF THE BOARD; IS IT NOT?

A THAT'S TRUE.

Q THERE'S NO STATUTORY OR REGULATORY REQUIREMENT THAT THE BOARD MAKE ANY SUCH ARRANGEMENTS?

A THAT'S PROBABLY TRUE, ALTHOUGH THERE IS A REGULATION THAT PROVIDES FOR SOMETHING LIKE THAT FOR A PARTICULAR INDUSTRY.

Q WHAT PARTICULAR INDUSTRY?

A IT'S THE GROCERY INDUSTRY.

* * *

Exh. 53

GUINN, SMITH & CO.
A PROFESSIONAL CORPORATION
CERTIFIED PUBLIC ACCOUNTANTS
3406 TEXAS DRIVE
IRVING, TEXAS 75062

(214) 255-7120

1980 Financial Statement

To the Board of Directors

JIMMY SWAGGART EVANGELISTIC ASSOCIATION
Baton Rouge, Lousiana:

We have examined the balance sheet of JIMMY SWAGGART EVANGELISTIC ASSOCIATION (a Louisiana non-profit corporation) as of December 31, 1980 and 1979, and the related statements of revenue, expenses and excess of assets over liabilities and changes in financial position for the years then ended. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. It was not practicable to extend tests of contributions received beyond the Association's accounting for such receipts.

In our opinion, the accompanying financial statements present fairly the financial position of JIMMY SWAGGART EVANGELISTIC ASSOCIATION as of December 31, 1980 and 1979, and the results of operations and changes in financial position for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

/s/ Guinn, Smith & Co.
Irving, Texas
June 30, 1981

JIMMY SWAGGART EVANGELISTIC ASSOCIATION
BALANCE SHEET – DECEMBER 31, 1980 AND 1979

ASSETS

	1980	*1979*
CURRENT ASSETS:		
Cash	$ 211,288	$ 182,298
Accounts receivable, net of reserve for doubtful accounts of $200,000 and $175,000 (Note 1)	527,123	463,423
Inventories (Note 1)	1,720,326	1,474,424
Prepaid expenses	60,664	11,512
Total current assets	2,519,401	2,131,657
NOTES RECEIVABLE (Note 4)	430,430	128,095
RADIO STATION LICENSES, net of amortization (Note 1)	4,806,265	4,935,856
PROPERTY, BUILDINGS AND EQUIPMENT, at cost (Note 1)		
Land	5,082,233	4,877,112
Buildings	1,753,768	1,615,884
Furniture, fixtures and equipment	7,842,772	4,539,087
Construction in process	149,757	–0–
	14,828,530	11,032,083
Less – allowance for depreciation	2,343,951	1,444,424
	12,484,579	9,587,659
OTHER ASSETS	860,975	418,441
Total	$ 21,101,650	$ 17,201,708

LIABILITIES AND EXCESS OF ASSETS OVER LIABILITIES

	1980	*1979*
CURRENT LIABILITIES:		
Bank overdraft	$ 773,260	$ -0-
Short-term debt (Note 5)	2,012,968	3,152,175
Current portion of long-term debt (Note 2)	132,053	807,183
Accounts payable	4,556,349	4,101,541
Accrued liabilities	647,966	156,039
Other current liabilities	–0–	251,934
Total current liabilities	8,122,596	8,468,872
LONG-TERM DEBT, less current portion (Note 2)	247,222	885,718
OTHER LIABILITIES	325,728	156,685
COMMITMENTS (Note 3)	–0–	–0–
EXCESS OF ASSETS OVER LIABILITIES	$ 12,406,104	$ 7,690,433
Total	$ 21,101,650	$ 17,201,708

The accompanying notes are an integral part of these statements

JIMMY SWAGGART EVANGELISTIC ASSOCIATION

STATEMENT OF REVENUE AND EXPENSES AND CHANGES IN EXCESS OF ASSETS OVER LIABILITIES FOR THE YEARS ENDED DECEMBER 31, 1980 AND 1979

	1980	*1979*
REVENUE:		
Contributions and sales of religious materials	$ 29,833,936	$ 18,927,016
Sales – radio broadcast time	2,048,025	1,613,834
	31,881,961	20,540,850
OPERATING EXPENSES:		
Radio and television evangelism	11,637,896	8,166,241
Religious materials	2,786,689	2,333,256
Salaries and wages	3,475,877	2,485,873
Printing, postage and shipping	4,206,993	2,109,028
Missions outreach	469,740	426,434
General, administrative and other	3,851,081	3,522,401
	26,428,276	19,043,233
Excess of revenue over operating expenses	5,453,685	1,497,617
OTHER (REVENUE) EXPENSES:		
Depreciation and amortization (Note 1)	1,080,703	674,653
Interest, net	375,125	453,792
Other, net	(705,366)	1,901
	750,462	1,130,346
EXCESS OF REVENUE OVER EXPENSES (Note 6)	4,703,223	367,271

EXCESS OF ASSETS OVER LIABILITIES, beginning of year	7,690,433	7,329,596
EFFECT OF CURRENCY TRANSLATION, foreign operations	12,448	(6,434)
EXCESS OF ASSETS OVER LIABILITIES, end of year	$ 12,406,104	$ 7,690,433

The accompanying notes are an integral part of these statements.

JIMMY SWAGGART EVANGELISTIC ASSOCIATION

STATEMENT OF CHANGES IN FINANCIAL POSITION FOR THE YEARS ENDED DECEMBER 31, 1980 AND 1979

	1980	*1979*
FINANCIAL RESOURCES WERE PROVIDED BY:		
Excess of revenue over expenses	$ 4,703,223	$ 367,271
Add charges not affecting working capital:		
Depreciation and amortization	1,080,703	674,653
Loss on sale of assets	–0–	62,981
Effect of currency translation	12,448	–0–
	5,796,374	1,104,905
Less credits not affecting working capital:		
Gain on sale of assets	721,412	–0–
Effect of currency translation	–0–	6,434
	5,074,962	1,098,471
Increase in long-term debt	–0–	443,120
Increase in other liabilities	169,044	156,685

Decrease in notes receivable	–0–	16,752
Proceeds from sale of assets	1,914,848	613,314
Total resources provided	7,158,854	2,328,342
FINANCIAL RESOURCES WERE USED FOR:		
Increase in notes receivable	302,335	–0–
Purchases of buildings, equipment and land	5,041,469	5,619,674
Reduction of long-term debt	638,496	–0–
Purchase of radio station licenses	–0–	1,869,999
Increase in other assets	442,534	411,705
Total resources used	6,424,834	7,901,378
Increase (decrease) in working capital	$ 734,020	$ (5,573,036)
CHANGES IN WORKING CAPITAL:		
Increase (decrease) in current assets:		
Cash	$ 28,990	$ 120,396
Short-term investments	–0–	(1,191,722)
Accounts receivable	63,700	22,086
Inventories	245,902	937,357
Prepaid expenses	49,152	(32,529)
	387,744	(144,412)
(Increase) decrease in current liabilities:		
Bank overdraft	(773,260)	123,840
Current portion of long-term debt	675,130	(743,895)
Short-term debt	1,139,207	(1,952,175)
Accounts payable	(454,808)	(2,578,283)
Accrued liabilities	(491,927)	(26,177)
Other current liabilities	251,934	(251,934)
	346,276	(5,428,624)

Increase (decrease) in working capital	$ 734,020	$ (5,573,036)

The accompanying notes are an integral part of these statements

JIMMY SWAGGART EVANGELISTIC ASSOCIATION
NOTES TO FINANCIAL STATEMENTS

(1) SUMMARY OF ACCOUNTING POLICIES

Principles of Consolidation

The financial statements include the accounts of all foreign subsidiary organizations. Significant intercompany balances and transactions have been eliminated.

Inventories

Inventories are stated at the lower of cost (determined on a first-in, first-out basis) or market.

Property and Depreciation

The Association provided for depreciation of buildings and improvements, furniture and equipment on the straight-line method. The estimated useful lives of the assets are as follows:

Buildings	25 - 30 years
Equipment	3 - 10 years
Furniture	3 - 10 years

Radio Station Licenses

Radio station license costs are the excess of cost over fair market value of assets acquired on the dates of acquisition, plus related legal expenses. These costs are amortized over a 40 year period.

Federal Income Taxes

The Association is classified as a tax exempt organization under the Internal Revenue Code 501(c)(3), and accordingly no provision for Federal Income Taxes is required.

Pledges

Accounts receivable balances at December 31, 1980 and 1979 do not include pledges from ministry partners, as the Association does not treat such pledges as contracts.

(2) LONG-TERM DEBT

A summary of long-term debt outstanding at December 31, 1980 and December 31, 1979, is set forth below:

	1980		1979	
	Current Portion	Long-Term Portion	Current Portion	Long-Term Portion
Non-Interest bearing note payable to an individual secured by property of Radio Station KWJS payable monthly beginning January 4, 1980 through 1981	$ 6,000	$ –0–	$ 6,000	$ 6,000
10% note payable to a corporation secured by transportation equipment payable monthly through 1982	7,621	2,133	–0–	–0–
10% note payable to a partnership secured by 53.68 acres of land payable semiannually through 1981	–0–	–0–	781,000	781,000
7% note payable to an individual secured by property of Radio Station KWJS payable monthly through 1985	21,642	77,225	20,183	98,718
10% note payable to a corporation secured by video equipment payable through 1983	43,236	61,252	–0–	–0–
17 1/2% note payable to a savings association interest only, principal portion due November 1982	–0–	16,500	–0–	–0–

	1980		1979	
	Current Portion	Long-Term Portion	Current Portion	Long-Term Portion
8% add on note payable to a corporation secured by video equipment payable through 1984	12,423	28,987	–0–	–0–
7% add on note payable to a corporation secured by video equipment payable through 1983	31,050	56,925	–0–	–0–
6% add on note payable to a corporation secured by video equipment payable through 1982	10,080	4,200	–0–	–0–
	$ 132,052	$ 247,222	$ 807,183	$ 885,718

(3) COMMITMENTS

The Association had the following commitments as of December 31, 1980:

Commitment Type	Number of Months Remaining	Amount
News services	36 - 41	$ 52,632
Facility leases	1 - 66	22,090
	Total commitments	$ 74,722

(4) NOTES RECEIVABLE

Included in notes receivable at December 31, 1980 is $192,790 and at December 31, 1979 is $57,321 due from directors of the Association. This is an interest bearing obligation for purchase of parsonages.

(5) SUBSEQUENT EVENTS

Subsequent to December 31, 1980 the Association entered into a contract for $4,914,200 for construction of new office facilities.

Subsequent to December 31, 1980 the Association has reduced short-term debt by $2,012,968.

(6) EXCESS OF REVENUE OVER EXPENSES

The current year's excess of revenue over expenses was used for the purchase of land, buildings and equipment, and other capital expenditures as outlined in the Statement of Changes in Financial Position.

Exh. 54

GUINN, SMITH & CO.
A PROFESSIONAL CORPORATION
CERTIFIED PUBLIC ACCOUNTANTS
3406 TEXAS DRIVE
IRVING, TEXAS 75062

(214) 255-7120

1981 Financial Statement

To the Board of Directors

JIMMY SWAGGART EVANGELISTIC ASSOCIATION
Baton Rouge, Lousiana:

We have examined the balance sheet of JIMMY SWAGGART EVANGELISTIC ASSOCIATION (a Louisiana non-profit corporation) as of December 31, 1981 and 1980, and the related statements of revenue, expenses and excess of assets over liabilities and changes in financial position for the years then ended. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. It was not practicable to extend tests of contributions received beyond the Association's accounting for such receipts.

In our opinion, the accompanying financial statements present fairly the financial position of JIMMY SWAGGART EVANGELISTIC ASSOCIATION as of December 31, 1981 and 1980, and the results of operations and changes in financial position for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

/s/ Guinn, Smith & Co.
Irving, Texas
February 23, 1982

JIMMY SWAGGART EVANGELISTIC ASSOCIATION
BALANCE SHEET – DECEMBER 31, 1981 AND 1980

ASSETS

	1981	*1980*
CURRENT ASSETS:		
Cash	$ 340,125	$ 211,200
Short-term investments, at cost	3,100,000	–0–
Current portion of notes receivables	55,618	–0–
Accounts receivable, net of reserve for doubtful accounts of $207,405 and $200,000 (Note 1)	439,941	527,123
Inventories	1,492,898	1,720,326
Prepaid expenses	45,261	60,664
Total current assets	5,473,843	2,519,401
NOTES RECEIVABLE (Note 4)	630,224	430,430
RADIO STATION LICENSES, net of amortization (Note 1)	4,676,674	4,806,265
PROPERTY, BUILDINGS AND EQUIPMENT, at cost (Note 1)		
Land	5,075,309	5,082,233
Buildings	2,759,350	1,753,768
Furniture, fixtures and equipment	9,366,660	7,842,772
Construction in process	2,723,549	149,757
	19,924,868	14,828,530
Less – allowance for depreciation	3,704,365	2,343,951
	16,220,503	12,484,579
OTHER ASSETS	874,387	860,975
Total	$ 27,875,631	$ 21,101,650

LIABILITIES AND EXCESS OF ASSETS OVER LIABILITIES

	1981	*1980*
CURRENT LIABILITIES:		
Bank overdraft	$ -0-	$ 773,260
Short-term debt (Note 5)	-0-	2,012,968
Current portion of long-term debt (Note-2)	131,072	132,053
Accounts payable	4,262,917	4,556,349
Accrued liabilities	1,077,653	647,966
Deferred revenue (Note 6)	1,770,669	–0–
Total current liabilities	7,242,311	8,122,596
LONG-TERM DEBT, less current portion (Note 2)	212,384	247,222
OTHER LIABILITIES	342,987	325,726
COMMITMENTS (Note 3)	–0–	–0–
EXCESS OF ASSETS OVER LIABILITIES	20,077,949	12,406,104
Total	$ 27,875,631	$ 21,101,650

The accompanying notes are an integral part of these statements

JIMMY SWAGGART EVANGELISTIC ASSOCIATION

STATEMENT OF REVENUE AND EXPENSES AND CHANGES IN EXCESS OF ASSETS OVER LIABILITIES FOR THE YEARS ENDED DECEMBER 31, 1981 AND 1980

	1981	*1980*
REVENUE:		
Contributions and sales of religious materials	$ 42,673,460	$ 29,833,936
Sales – radio broadcast time	2,194,162	2,048,025
	44,867,622	31,881,961
OPERATING EXPENSES:		
Radio and television evangelism	13,342,703	11,637,896
Religious materials	2,446,414	2,786,689
Salaries and wages	4,890,876	3,475,877
Printing, postage and shipping	6,841,021	4,206,993
Missions outreach	1,246,865	469,740
General, administration and other	7,055,123	3,851,081
	35,823,002	26,428,276
Excess of revenue over operating expenses	9,044,620	5,453,685
OTHER (REVENUE) EXPENSES:		
Depreciation and amortization (Note 1)	1,596,926	1,080,703
Interest, net	(15,709)	375,125
Other, net	(204,123)	(705,366)
	1,377,094	750,462
EXCESS OF REVENUE OVER EXPENSES (Note 7)	7,667,526	4,703,223

EXCESS OF ASSETS OVER LIABILITIES, beginning of year	12,406,104	7,690,433
EFFECT OF CURRENCY TRANSLATION, foreign operations	4,319	12,448
EXCESS OF ASSETS OVER LIABILITIES, end of year	$ 20,077,949	$ 12,406,104

The accompanying notes are an integral part of these statements

JIMMY SWAGGART EVANGELISTIC ASSOCIATION

STATEMENT OF CHANGES IN FINANCIAL POSITION FOR THE YEARS ENDED DECEMBER 31, 1981 AND 1980

	1981	*1980*
FINANCIAL RESOURCES WERE PROVIDED BY:		
Excess of revenue over expenses	$ 7,667,526	$ 4,703,223
Add charges not affecting working capital:		
Depreciation and amortization	1,596,925	1,080,703
Effect of currency translation	4,319	12,448
	9,268,770	5,796,374
Less credits not affecting working capital:		
Gain on sale of assets	89,499	721,412
	9,179,271	5,074,962
Increase in other liabilities	17,258	169,044
Proceeds from sale of assets	136,000	1,914,848
Total resources provided	9,332,529	7,158,854

FINANCIAL RESOURCES WERE USED FOR:		
Increase in notes receivable	199,794	302,335
Purchases of buildings, equipment, land	5,249,758	5,041,469
Reduction of long-term debt	34,838	638,496
Increase in other assets	13,412	442,534
Total resources used	5,497,802	6,424,834
Increase (decrease) in working capital	$ 3,834,727	$ 734,020
CHANGES IN WORKING CAPITAL:		
Increase (decrease) in current assets:		
Cash	$ 128,837	$ 28,990
Short-term investments	3,100,000	–0–
Current Portion-notes receivable	55,618	–0–
Accounts receivable	(87,182)	63,700
Inventories	(227,428)	245,902
Prepaid expenses	(15,403)	49,152
	2,954,442	387,744
(Increase) decrease in current liabilities:		
Bank overdraft	773,260	(773,260)
Current portion of long-term debt	981	675,130
Short-term debt	2,012,968	1,139,207
Accounts payable	293,432	(454,808)
Accrued liabilities	(429,687)	(491,927)
Deferred revenue	(1,770,669)	251,934
	880,285	346,276
Increase (decrease) in working capital	$ 3,834,727	$ 734,020

The accompanying notes are an integral part of these statements

JIMMY SWAGGART EVANGELISTIC ASSOCIATION
NOTES TO FINANCIAL STATEMENTS

(1) SUMMARY OF ACCOUNTING POLICIES

Principles of Consolidation

The financial statements include the accounts of all foreign subsidiary organizations. Significant intercompany balances and transactions have been eliminated.

Inventories

Inventories are stated at the lower of cost (determined on a first-in, first-out basis) or market.

Property and Depreciation

The Association provided for depreciation of buildings and improvements, furniture and equipment on the straight-line method. The estimated useful lives of the assets are as follows:

Buildings	25 - 30 years
Equipment	3 - 10 years
Furniture	3 - 10 years

Radio Station Licenses

Radio station license costs are the excess of cost over fair market value of assets acquired on the dates of acquisition, plus related legal expenses. These costs are amortized over a 40 year period.

Federal Income Taxes

The Association is classified as a tax exempt organization under the Internal Revenue Code 501(c)(3), and accordingly no provision for Federal Income Taxes is required.

Pledges

Accounts receivable balances at December 31, 1981 and 1980 do not include pledges from ministry partners, as the Association does not treat such pledges as contracts.

(2) LONG-TERM DEBT

A summary of long-term debt outstanding at December 31, 1981 and December 31, 1980, is set forth below:

	1981		1980	
	Current Portion	Long-Term Portion	Current Portion	Long-Term Portion
Non-Interest bearing note payable to an individual secured by property of Radio Station KWJS payable monthly beginning January 4, 1980 through 1981	$ –0–	$ –0–	$ 6,000	$ –0–
10% note payable to a corporation secured by transportation equipment payable monthly through 1982	3,112	$ –0–	7,621	$ 2,133
13% note payable to a bank secured by land payable monthly through 1987	10,300	83,826	–0–	–0–
7% note payable to an individual secured by property of Radio Station KWJS payable monthly through 1985	23,206	53,237	21,642	77,225
10% note payable to a corporation secured by video equipment payable through 1983	43,236	10,015	43,236	61,252
17½% note payable to a savings association interest only, principal portion due November 1982	–0–	14,066	–0–	16,500

	1981		1980	
	Current Portion	Long-Term Portion	Current Portion	Long-Term Portion
8% add on note payable to a corporation secured by video equipment payable through 1984	11,387	16,565	12,423	28,987
7% add on note payable to a corporation secured by video equipment through 1983	28,463	25,875	31,050	56,925
6% add on note payable to a corporation secured by video equipment payable through 1982	3,360	–0–	10,080	4,200
	$ 131,072	$ 212,384	$ 132,052	$ 247,222

(3) COMMITMENTS

Long-term Lease Commitments:

The Association had the following lease commitments as of December 31, 1981:

	Aggregate Minimum Rentals (all Non-Capitalized Leases)		
	Radio Stations	*Buildings*	*Total*
1982	42,948	21,600	64,548
1983	42,948	12,600	55,548
1984	19,506	–	19,506
1985	1,760	–	1,760
1986	380	–	380
	107,542	34,200	141,742

Commitments and Contingencies:

The Association has entered into lease agreements which are contingent upon delivery by May 1, 1982. These leases are for computer hardware, software and maintenance agreements and the minimum aggregate rentals are as follows:

1982	$ 237,160
1983	404,607
1984	342,562
1985	124,755
	$1,109,184

The Association has entered into contracts for Data Processing facilities management and management consulting. The contract for the data processing facilities management requires payment of $1,446,546 in 1982 and $602,690 in 1983. The management consulting contract can be rescinded by either party with a 90 day written notice. The

yearly commitment for 1982 is $150,000 with subsequent years valued at $144,000.

(4) NOTES RECEIVABLE

Included in notes receivable at December 31, 1981 is $342,133 and at December 31, 1980 is $192,790 due from directors of the Association. This is an interest bearing obligation for purchase of parsonages.

(5) SUBSEQUENT EVENTS

On February 15, 1982 the Association purchased 36.377 acres of land for $750,000. The $750,000 was provided by a short-term bank loan.

The Association sold Radio Station KWKI for $3,100,000 cash on March 1, 1982.

(6) DEFERRED REVENUE

Deferred revenue consists of payments received in 1981 for religious materials not shipped until 1982. Deferred revenue is recognized in the period in which the corresponding materials are shipped.

(7) EXCESS OF REVENUE OVER EXPENSES

The current year's excess of revenue over expenses was used for the purchase of land, buildings and equipment, and other capital expenditures as outlined in the Statement of Changes in Financial Position.

Exh. 55

[7] *INTERROGATORY NO. 14:*

". . . ."

"3. What percentage of sales were a) bibles; b) sermon booklets; c) bible study manuals and component parts ('study manuals'); d) gospel piano/organ courses; e) other books; f) audio recorded music; g) audio recorded sermons; or h) other tangible personal property (identify and describe)?"

ANSWER TO INTERROGATORY NO. 14:

". . . . As to part three, the following response is submitted. JSM's records do not provide a breakdown of distribution by item for California. . . . Attached is a summary of national distributions by class of merchandise that encompasses the period from 1979 through mid-1982. From these figures one could estimate the amount of distribution in California by item. The estimate would be done in the following manner. First, it would be necessary to determine what percent of the total national distributions the California distributions constitute. This percentage figure would then be applied to each item. This is the best and only available method of determining distributions by item in California."

MERCH SALES ENDING MID 1982 10/16/84 14:40 PAGE

	-- ENDING MID 82 --		-- PRIOR TO 1982 --		ALL TIME END MID-82	
LRA	COUNT	DOLLAR	COUNT	DOLLAR	COUNT	DOLLAR
ALBUMS	56,719	$531,678	314,352	$2,487,778	371,071	$3,019,456
TAPES	157,983	$1,025,754	506,806	$3,177,226	664,789	$4,202,980
BOOKS	155,612	$1,051,556	238,611	$2,844,963	394,223	$3,896,519
OTHER	84,995	$1,064,987	380,129	$6,987,577	465,124	$8,052,564
	455,309	$3,673,975	1,239,898	$15,497,544	1,895,207	$19,171,519

National Figures – Begin 1979

Attachment To
Interrogatory 14
Supplemental Answer

[8] *INTERROGATORY NO. 15*

"With respect to crusade merchandise sales . . . .

"A. describe in detail . . . ."

"3. How prices set, notice to customers of prices, tax reimbursement, payment terms; authority to reduce prices or give away merchandise (and extent to which and by whom such authority was exercised;"

ANSWER TO INTERROGATORY NO. 15

* * *

[9] Factors considered in determining the price are the cost of the item, and the prices of similar items in the marketplace. . . ."

* * *

". . . . Combination prices generally were set by Donnie Swaggart with virtually every crusade featuring increasingly cheaper prices for quantity purchases. In deciding what prices to reduce, he would consider the demand for particular items.

* * *

According to Donnie Swaggart, the amount given away never was significant."

* * *

[10] "The products are not distributed directly for use in other activities of JSM."

[11] INTERROGATORY NO. 16:

"With respect to the mail order sales. . . ."

"A. Please describe in detail. . . .

"3. How prices set, notice to customers of prices, tax reimbursement, payment terms; authority to reduce prices or give away merchandise (and extent to which and by whom such authority was exercised);

ANSWER TO INTERROGATORY NO. 16:

"Prices were set by management and communicated to the purchasers in the media in which the items were offered."

". . . . The items were offered in five primary manners: The Evangelist, radio, television, product catalogs (or fliers) and special mailings."

". . . . The authority to redu e prices was vested in upper management only – normally Jimmy or Donnie Swaggart – and they likewise exercised the right to give merchandise away in situations they felt deemed such."

[12] "Again, there was no set procedure for establishing prices. Rather, prices were established on an item-by-item basis . . . . Any give-aways would occur when a visiting minister might be touring the facility and Jimmy Swaggart might offer him a bible as a gift. Other than the giving of items to visiting ministers, prices were not reduced below cost."

[13] "Again, there are no situations wherein the items in issue are distributed directly for use in other activities of JSM."

[14] INTERROGATORY NO. 18:

"Please identify (in the manner requested in the preface) each advertisement, notice, announcement or other writing, communication or action by which plaintiff or it's agent made known to California purchasers the availability or the price of the items in issue? With respect to which transactions was each used?"

ANSWER TO INTERROGATORY NO. 18:

"The availability and price of Ministry merchandise was communicated to prospective California purchasers in five primary ways: the Ministry's magazine, The Evangelist; radio programming; television programming; special sales literature such as catalogs and fliers; and direct mail letters or brochures . . . ."

[15] INTERROGATORY NO. 19:

"Please describe in detail step-by-step (including descriptions and identification of each writing, communication, and action) what you referred to as . . . ."

". . . less amounts were accepted for the materials, an in the case of persons without funds, the religious materials, nevertheless, were distributed."

ANSWER TO INTERROGATORY NO. 19:

"The policy of JSM to distribute religious materials notwithstanding that the person requesting the item may not remit the stated price has not been publicized. The policy has been communicated to those within JSM who likely would receive such a request, with instructions to

forward any requests to Donnie Swaggart. The decision to distribute religious materials in this manner is made by Donnie Swaggart."

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

THE JIMMY SWAGGART MINISTRIES	*	NUMBER 517830
PLAINTIFF	*	
VERSUS	*	
BOARD OF EQUALIZATION OF CALIFORNIA	*	

* * * * * * * * * * * * * * * * * * * *

OFFER OF PROOF

Introduction

In the absence of a written transcript of the trial proceedings in the captioned case held May 5 through May 7, 1986, it is impossible to accurately determine the content of the oral proof from witnesses excluded by the Court. However, the material excluded is believed to fall into three categories: (1) proof tending to show a violation of the due process clause of the United States Constitution by imposition of California use tax collection requirements on Jimmy Swaggart Ministries despite Jimmy Swaggart Ministries' lack of sufficient nexus with the State of California; (2) proof excluded on the issue of entanglement between the State of California (along with other states) and organized religious institutions, resulting from imposition of sales and use tax upon the transmission of the religious message in written form; and (3) necessary impact of the California sales and use tax law

and regulations upon religious organizations other than Jimmy Swaggart Ministries.

The offer of proof will be in a condensed narrative form combining the three categories listed above and consisting of proof that would have been elicited from one or both of the two witnesses called by Jimmy Swaggart Ministries, Reverend Jim Rentz and Mr. James Guinn.

Offer of Proof

Jimmy Swaggart Ministries ("JSM") has conducted only five religious crusades in the State of California for the years 1981 through May 31, 1986, a period of six years. These meetings consisted of two in 1981, one in 1982, one in 1983, none in 1984, one in 1985, and none in 1986 up to the present date. JSM has never had an office in the State of California and has only had one representative in the State of California, and he was there as a minister of the gospel solely for the purpose of counseling adherents of JSM and assisting adherents of JSM in their involvement in the ministry of Jimmy Swaggart Ministries. That representative, who served from 1978 through 1984 had no responsibility whatever for the distribution of tangible personal property in the form of religious-message content materials. Jimmy Swaggart Ministries does not pay sales or use tax to any state, municipal or other local government authority for the distribution of religious items at its crusades. JSM does not pay sales or use tax to any state, county, municipal or other local government authority for the distribution of

religious items by mail order out of the State of Louisiana. Jimmy Swaggart Ministries does not distribute these religious materials with the object of gain, benefit or advantage to JSM, directly or indirectly. Jimmy Swaggart Ministries is a church with auxilliary ministries in education including Biblical studies education. JSM has been recognized as a church, with such auxilliary ministries, by the Internal Revenue Service by virtue of rulings of the Internal Revenue Service of the United States which rulings are in written form and are part of the regular business records of JSM as well as being record of an official governmental action.

The sales and use tax statutes or ordinances of various states, counties, municipalities, or other special taxing districts throughout the United States provide varying rates of tax for different transactions in the vast number of taxing jurisdictions throughout the United States. A great number of these different state, local, municipal, county and special tax district tax statutes and ordinances have different rates of tax, require different permit requirements, and different forms of tax return.

The accounting involvement to collect, report, and file sales and use tax returns in all of these taxing jurisdictions throughout the United States would be an insurmountable burden for churches to bear in regard to the expense of distributing their religious message. The accounting and legal involvement required would be: (1) to determine the tax in each different location; (2) to keep track of all of the changes in that tax on at least a monthly basis; (3) to collect the different tax from individuals in each of those locations; (4) to report the different tax; (5) to secure and file returns in each of those locales; (6) to

respond to audit inquiries for each of these taxing jurisdictions; (7) to devise some method in many jurisdictions of advertising the price and the tax rate so that the individuals solicited for such donations or sales would know the amount of tax to send with their request so that the proper amount could be collected; (8) to develop a procedure to dub a different advertisement onto each tape for each different television station locale, which now exceeds 600 local television stations plus thousands of local cable outlets (the dubbed advertisement would have to be flexible enough to state the varying tax rates for the varying locations to which JSM would be required to mail religious-content materials within the viewing area of that station or cable outlet); (9) to prepare receipts to each of these individuals to properly account for the proper rate of tax; (10) to establish and maintain an extensive library constantly to provide and update the varying taxing rates and requirements for each of the thousands of taxing jurisdictions within the United States in state, county, municipal, and other special taxing districts.

Since many of the religious-content message materials are distributed for a donation JSM would be required to make a determination as to each taxing jurisdiction's treatment of such a transaction, and if it were taxable in such taxing jurisdiction a determination would have to be made as to each such taxing jurisdiction whether the tax would be imposed on the full amount of the donation or on the fair market value of the item requested, or on some other means of measurement. All of the foregoing accounting procedures and records would necessitate the development of new and different

computer software programs at a minimum expense of $2,000,000 and would require one to three years to develop and implement.

In addition to the television advertisement requirements described above, the *Evangelist* magazine and other ordering materials for such religious-content materials would have to be revised and substantially increased in length in order to inform individuals in all of the varying taxing jurisdictions described above as to how to calculate the tax owed on the materials they were ordering.

None of the 230 plus local churches and religious ministries from the size of one individual staff member to 1000 employees represented by Mr. Guinn in his practice as a certified public accountant representing religious organizations, pays sales and use tax on interstate sales. If those ministries, large and small, had to collect and pay over sales and use tax in all of the various cities, counties, states, school districts, transportation districts, and other special taxing districts in the country, most of them would have to cease distributing religious-content message materials or risk non-compliance, fines, and the necessarily bad publicity that would attend such non-compliance. This would have the effect of substantially inhibiting these religious organizations', churches' and individual evangelists' ability to spread their religious message.

The foregoing result of allowing such taxation of the distribution of religious-content materials by religious organizations would cause daily extensive entanglement between the states and local governments and religious organizations represented by Mr. Guinn, which are representative of churches, evangelists, and religious organizations throughout the country.

If the audit figure arrived at in California had not been stipulated, it could not have been accurately arrived at. The reason the tax figure could not have been accurately determined is the inadequacy of records. This is true even though the records are totally adequate for a complete and certifiable audit of Jimmy Swaggart Ministries' books and records according to the procedures specified by the American Institute of Certified Public Accountants. New systems would have to be established and new and different books and records kept in order to meet the requirements of California and all of the other state and local governments and taxing jurisdictions, at a cost impact that would tremendously reduce the effective distribution of the religious-content message by Jimmy Swaggart Ministries and by the other religious organizations represented by Mr. Guinn, both large and small.

The effect of the sales and use tax would be to place tax on what many people send to Jimmy Swaggart Ministries and other religious organizations as a donation, and this tax would be effectively imposed on the religious message itself or the privilege of preaching and teaching the religious message.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

DATE SEPTEMBER 16, 1986 MINUTES DEPT. 33

PRESENT: HON. JACK R. LEVITT JUDGE

CLERK JACK W. BOYD REPORTER _____

BAILIFF _____

517830

JIMMY SWAGGART MINISTRIES, Plaintiff	by Richard R. Gore and William D. Treeby
vs.	
BOARD OF EQUALIZATION, Defendant.	by Neal J. Gobar Deputy Atty General

This matter was heard on May 6 and 7, 1986, and was taken under submission on August 8, 1986, after receipt of briefs from counsel.

The Court finds for the defendant, Board of Equalization of California and awards its costs.

The Court has made its finding solely upon the issue framed by the pleadings as it relates to first amendment grounds.

The Court finds that the payment of the California sales and use taxes in context in this case did not interfere unconstitutionally with the free exercise of religion. The case of INSTITUTE IN BASIC YOUTH CONFLICTS, INC. v. STATE BOARD OF EQUALIZATION (1985), 166 Cal.App.3d 1093, is controlling and provides that the use tax is on the consumer, but requires the retailer to collect

it at the time of the sale, is an excise tax and does not raise concerns under the first amendment.

Counsel for defendant shall prepare an appropriate order.

JOHN K. VAN DE KAMP, Attorney General
of the State of California
NEAL J. GOBAR,
Deputy Attorney General
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San Diego, Calif. 92101
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Attorneys for Defendant
State Board of Equalization

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
COUNTY OF SAN DIEGO

THE JIMMY SWAGGART MINISTRIES,	) No. 517830
	) JUDGMENT
Plaintiff,	) (Filed Nov. 6, 1986)
v.	)
BOARD OF EQUALIZATION OF CALIFORNIA,	)
Defendant.	)

The above entitled action, having come on regularly for trial in Department 33 of the above entitled Court, before the Honorable Jack R. Levitt, Judge Presiding, without a jury, on May 6 and 7, 1986, plaintiff Jimmy Swaggart Ministries having appeared by Stone, Pigman, Walther, Wittmann & Hutchinson, by William D. Treeby and Judy Y. Barrasso, Esq., defendant State Board of Equalization having appeared by John K. Van de Kamp, Attorney General, by Neal J. Gobar, Deputy Attorney General; and evidence, both oral and documentary, including as well various written stipulations, having been introduced by both parties; the matter having been

argued and submitted, the Court having issued its decision by Minute Order dated September 16, 1986.

IT IS ORDERED, ADJUDGED AND DECREED and judgment is hereby rendered that plaintiff Jimmy Swaggart Ministries take nothing on his Complaint and that defendant State Board of Equalization recover its costs in this action in the amount of $ ___.

DATED: NOV 6 1986

/s/ JACK R. LEVITT
JACK R. LEVITT
JUDGE OF THE SUPERIOR COURT

[No. D005707. Fourth Dist., Div. One, Aug. 29, 1988]

[As modified Sept. 28, 1988.]

JIMMY SWAGGART MINISTRIES, Plaintiff and Appellant, v. STATE BOARD OF EQUALIZATION, Defendant and Respondent.

SUMMARY

—The trial court entered judgment refusing a refund of sales and use taxes paid under protest to the state by an out-of-state religious organization. The organization, a nonprofit religious corporation, had conducted numerous evangelistic crusades in California, in cooperation with local churches. At the crusades, the organization sold religious books, records and tapes as well as other religious and nonreligious merchandise. After learning that the organization was selling tangible personal property at its crusades in California, the State Board of Equalization commenced an audit and notified the organization that it owed sales taxes based upon sales made at the California crusades, and use taxes based upon mail order sales to California purchasers. Thereafter, the board denied the organization's petition for a refund of the taxes paid. (Superior Court of San Diego County, No. 517830, Jack R. Levitt, Judge.)

The Court of Appeal affirmed. It held California's imposition of sales and use taxes on a religious organization does not violate the free exercise clause of U.S. Const., 1st Amend. (providing that Congress shall make no law prohibiting the free exercise of religion). It also

held the imposition of such taxes on the organization was not unconstitutional under the establishment clause of the First Amendment (providing that Congress shall make no law respecting an establishment of religion). Finally, the court held the sales and use taxes offended neither U.S. Const., 9th Amend., nor U.S. Const., 10th Amend. (Opinion by Kremer, P. J., with Work and Todd, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **Taxpayers' Remedies § 11 – Proceedings and Actions to Recover Taxes Paid – Burden of Proof.** – In an action for a refund of taxes, the taxpayer has the burden of establishing all the facts necessary to establish its right to a refund.

[See Cal.Jur.3d, Sales and Use Taxes, § 23; Am.Jur.2d, Taxpayers' Actions, § 60.

(2a, 2b) **Sales and Use Taxes § 3 – Constitutionality – Imposition on Religious Organization.** – California's imposition of sales and use taxes (Rev. & Tax. Code, § 6001 et seq.) on a religious organization does not violate the free exercise clause of U.S. Const., 1st Amend. (providing that Congress shall make no law prohibiting the free exercise of religion). In substance, the sales and use tax laws catch all transactions which result in tangible personal property joining the aggregate of capital assets within the state. This produces one effect; not two. The practical and legal effect of such statutes is to make the vendor liable for a use tax due from the purchaser. That effect is not forbidden by the Constitution. Even though sellers are required to register before selling their products, this only

incidentally affects religion and does not turn the sales tax into an unconstitutional prior restraint on the free exercise of religion. Nor does the sales tax restrain the dissemination of a religious message.

(3) **State of California § 10 –Attorney General – Opinions,** – Opinions of the Attorney General are issued in response to specific questions posed by state legislators, officers and agencies and are not issued gratuitously. Also, opinions of the Attorney General are advisory only and do not carry the weight of law.

(4a, 4b) **Sales and Use Taxes § 18 – Use Tax – Constitutionality – Imposition on Religious Organization.** – The imposition of California's sales and use taxes (Rev. & Tax. Code. § 6001 et seq.), on a nonprofit, out-of-state religious organization that sold religious items during evangelistic crusades in California, was not unconstitutional under the establishment clause of U.S. Const., 1st Amend. (providing that Congress shall make no law respecting an establishment of religion). Neither the organization's difficulty in establishing past "sales" from its books due to its past accounting practices nor the requirement of future record-keeping involved the government with an excessive entanglement with religion so as to violate the establishment clause. Also, the statutory scheme, on its face, does not result in excessive administrative entanglement with regard to the work of religious and state employees in carrying out the scheme, state scrutiny of religious content, or enforcement by government investigators.

(5) **Constitutional Law § 53 – Freedom of Religion – Establishment Clause.** – Determining that the legislative purpose of tax exemption is not aimed at establishing, sponsoring or supporting religion does not end the inquiry of excessive governmental entanglement between church and state. A reviewing court must also be sure that the end result – the

effect – is not an excessive government entanglement with religion. The test is inescapably one of degree. Either course, taxation of churches or exemption, occasions some degree of involvement with religion. In analyzing either alternative, the questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement.

(6a, 6b) **Taxpayers' Remedies § 2 – Exhaustion of Administrative Remedies – Religious Organization.** – On appeal from an action for a refund of sales and use taxes paid under protest by a nonprofit, out-of-state religious organization that sold religious items during evangelistic crusades in California, the organization failed to exhaust its administrative remedies with regard to the contentions that it was not a retailer engaged in business in the state, and that it did not have a sufficient nexus to California and thus could not be taxed without offending the commerce clause. Such issues were not raised by the organization in its claim for a refund from the State Board of Equalization; the only constitutional ground the organization specified was U.S. Const., 1st Amend. Also, nothing indicated it would have been futile to raise such issues, nor did these particular issues raise important questions of public policy. Instead, they raised factual questions, the determination of which was a matter of evidence.

(7) **Taxpayers' Remedies § 2 – Exhaustion of Administrative Remedies – Claim for Refund.** – Issues not raised in a claim for a refund may not be raised in a suit for a refund; the suit may be brought only on the grounds set forth in the claim (Rev. & Tax Code, § 6933). The claim for refund thus frames and restricts the issues for litigation. Failure to exhaust administrative remedies before the State Board of Equalization is a jurisdictional procedural defect

which bars court action contesting imposition of tax.

(8) **Taxpayer's Remedies § 2 – Exhaustion of Administrative Remedies – Rationale.** – The rationale behind the rule of confining a complaint and trial to issues raised in the claim for refund is exhaustion of remedies. Prior to seeking relief from the superior court, a taxpayer must present matters of law and fact to the State Board of Equalization so that the board may be afforded the opportunity to rectify any mistake in tax collection. Such a rule prevents having an overworked court consider issues and remedies available through administrative channels.

(9) **Sales and Use Taxes § 3 – Nature and Purpose – Constitutionality Under Ninth and Tenth Amendments.** – U.S. Const., 9th Amend., providing that the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people, had no application to an action by a nonprofit, out-of-state religious corporation for a refund of sales and use taxes paid under protest, with regard to religious items sold during evangelistic crusades in California. The rights at issue, free exercise of religion and separation of church and state, are enumerated in the Constitution, in the first two clauses of U.S. Const., lst Amend. Also, U.S. Const., l0th Amend., providing that the power not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people, had no application to such taxpayer action. The power involved here, the power to tax, is inherently a power of the government, not of individual citizens, as the framers recognized by giving Congress the power to lay and collect taxes.

(10) **Appellate Review § 109 – Briefs – Argument and Authority.** – Where a point is merely asserted by appellant's counsel without any argument of or

authority for the proposition, it is deemed to be without foundation and requires no discussion by the reviewing court.

COUNSEL

Ajalat & Polley, Charles R. Ajalat, Terry L. Folley, Richard J. Ayoob, Schall, Boudreau & Gore and Richard R. Gore for Plaintiff and Appellant.

John K. Van de Kamp, Attorney General, and Neal J. Gobar, Deputy Attorney General, for Defendant and Respondent.

OPINION

KREMER, P. J. – The Jimmy Swaggart Ministries (ministries) appeals a judgment refusing a refund of sales and use taxes paid under protest to the State of California. Ministries contends the taxes burden the free exercise of religion, excessively entangle the state with religion and offend the Ninth and Tenth Amendments. Ministries also contends insufficient facts support findings it was a "retailer" within the meaning of the tax laws or that it had a sufficient nexus to California to allow imposition of the sales and use taxes, that the trial court committed various evidentiary errors and erroneously denied it leave to amend its complaint. We conclude the sales and use taxes are constitutional and that the record does not support Ministries's other contentions. Therefore, we affirm.

FACTS

During the period in question (1974-1981), Ministries was a nonprofit religious corporation affiliated with the

Assemblies of God church.[1] Ministries describes itself as "an evangelistic outreach to promote the gospel of Jesus Christ" by all available means, including "evangelistic crusades," radio and television broadcasting (both as owner and broadcaster), recording music and preaching, writing and publishing "and, [by] any and all other individual or mass media methods that presently exist or may be devised in the future to proclaim the good news of Jesus Christ"[2]

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[1] The parties stipulated that Ministries "called itself a 'church-affiliated evangelistic outreach.' "

In 1980, Ministries began holding local church services in Baton Rouge, Louisiana, and applied to change its federal tax exemption from a religious organization to a church. Eventually, in 1982, the Internal Revenue Service granted the income tax class status change to "church" based on services being held at the Baton Rouge church, making the change retroactive to 1980.

[2] Ministries's [sic] constitution and by-laws provided: "That Jimmy Swaggart Ministries is called for the purpose of establishing and maintaining an evangelistic outreach for the worship of Almighty God, our heavenly Father in which the Holy Spirit will be honored according to our distinctive testimony; to assume a proper share of responsibility and privilege of propagating the gospel of Jesus Christ by all available means, both at home and in foreign lands. This outreach shall not be limited as to method, but shall specifically include evangelistic crusades; missionary endeavors; education (including pre-school, kindergarten, elementary, secondary, and post-secondary); radio broadcasting (as owner, broadcaster, and placement agency); television broadcasting (both as owner and broadcaster); and audio production and reproduction of music; audio production and reproduction of preaching; audio production and reproduction of teaching; writing, printing and publishing; and, any and all other individual or mass media methods that presently exist or may be devised in the future to proclaim the good news of Jesus Christ."

During 1974-1981, Ministries conducted numerous "evangelistic crusades" in auditoriums and arenas across the country in cooperation with local churches. Over this period, Ministries held 23 crusades in California. The crusades lasted one to three days, with one crusade lasting six days. The crusades in California totaled 52 days over the period involved here. At the crusades, Ministries conducted services which included preaching and singing. Some of these services were recorded for later sale and/or broadcast. Outside, Ministries sold religious books, records and tapes as well as other religious and nonreligious merchandise[3] at tables for either cash or credit card.

Ministries also published a magazine, "The Evangelist," which was sold nationwide by subscription. "The Evangelist" had California subscribers. The articles in the magazine were generally of a religious nature. Ministries advertised its religious books, tapes and records for sale

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[3] This merchandise included mugs, bowls, plates, pen and pencil sets, bud vases, communion cups, candlesticks, a replica of a Roman coin, prints of religious scenes, T-shirts with Ministries's [sic] logo, replicas of the Crown of Thorns and Ark of the Covenant. This merchandise is not strictly the subject of this lawsuit. Ministries and the board stipulated: "In October, 1985, JSM and SBE agreed that JSM could amend its prayer and eliminate its contest of the taxability of the sale and use of certain items included in paragraphs 4, 8 and 9 above which plaintiff says do not have specific religious-message content- . . . that the parties will after trial try to determine the amounts by agreement if necessary or by a subsequent court hearing."

in the magazine[4] and included an order blank listing the various items for sale in the particular issue, their unit price and provided spaces for filling in the quantity desired and the total price. Ministries also offered items for sale on its radio and television broadcasts.

In early 1980, the Board of Equalization of the State of California (Board) became aware Ministries was selling tangible personal property at its crusades in California. The Board informed Ministries that there was no sales tax exemption for religious materials and requested Ministries to register as a seller (to facilitate reporting and paying tax on sales). Ministries asserted it was exempt under the First Amendment.

In 1981, an audit commenced. The auditor suggested Ministries was also liable for a use tax on its mail order sales to California residents. In July 1981, the Board advised Ministries that (1) it should register as a seller, report and pay sales tax on all sales made at its California crusades, and (2) that there was a sufficient nexus with

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[4] For example, in the June 1981 issue of "The Evangelist," Ministries advertised: "GIANT EIGHT-TRACK TAPE SALE [§] Five eight-tracks normally sell for $30. However, you can now get five at our special sale price of $15 – that's half price. We are overstocked and have no place to store all these tapes. Our new building is underway, but it will be six months before it is completed. We have to move the stock now. Take advantage of this half-price sale – AVAILABLE IN EIGHT-TRACKS ONLY." The eight-track tapes available for sale included such titles as "You Don't Need to Understand," "Jesus is the Sweetest Name I Know," and "The Sacred Strings of Jimmy Swaggart." The ad finished by stating "AVAILABLE IN SETS OF 5 ONLY – $6 each when purchased separately. [¶] Any 5 tapes – $15 [¶] Any 10 tapes – $30 [¶] Any 15 tapes – $45."

the State of California to require Ministries to collect and report use tax on its mail order sales to California purchasers.

Ministries cooperated with the Board by making its records available. Based on the records Ministries had provided, the parties stipulated "that [Ministries] sold for use in California tangible personal property for the period April 1, 1974, through December 31, 1981, measured by payment to [Ministries] of $1,702,942.00 for mail order sales from Baton Rouge, Louisiana and $240,560.00 for crusade merchandise sales in California." The Board notified Ministries it owed sales and use taxes of $118,294.54 plus interest of $36,021.11 and a penalty of $11,829.45 for a total amount due of $166,145.10. Ministries filed a petition for redetermination with the Board, arguing exemption from the tax under the First Amendment. Following a hearing and an appeal to the Board, the Board deleted the penalty but otherwise redetermined the matter without adjustment in the amount of $118,294.54 in taxes owing plus $65,043.55 in interest. Ministries paid the amount but filed a petition for redetermination and a refund with the Board. When the Board denied Ministries's [sic] petition, Ministries brought this lawsuit, seeking a refund of the taxes paid.

Following a trial, the trial court entered judgment for the Board, ruling that Ministries was not entitled to a refund of any taxes.

Discussion

I

The Sales and Use Tax Law (Rev. & Tax Code, § 6001 et seq.)[5] requires retailers to pay a sales tax "[f]or the privilege of selling tangible personal property at retail . . . ." (§ 6051.) A "sale" includes any transfer of title of tangible personal property in any manner. (§ 6006.)

The use tax is complementary to the sales tax. It is "imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer . . . for storage, use, or other consumption" (§ 6201) at the same rate as the sales tax. The use tax is on the purchaser (§ 6202) but is generally collected by the retailer at the time the sale is made (§§ 6202-6206).

(1) In an action for a refund of taxes, the taxpayer has the burden of establishing all the facts necessary to establish its right to a refund. (*El Dorado Oil Works v. McColgan* (1950) 34 Cal.2d 731, 744-745 [215 P.2d 4], app. dism. 340 U.S. 801 [95 L.Ed. 589, 71 S.Ct. 52]; *Honeywell, Inc. v. State Bd. of Equalization* (1982) 128 Cal.App.3d 739, 744-745 [180 Cal.Rptr. 479].)

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[5] All statutory references are to the Revenue and Taxation Code unless otherwise specified.

Neither the California Constitution nor the Sales and Use Tax Law exempts religious organizations generally from sales and use taxes.[6]

II

(2a) Ministries contends California's imposition of the sales and use taxes on it violates the free exercise clause of the First Amendment.[7] In support of this argument, Ministries relies primarily on the United States Supreme Court's 1943 decision in *Murdock v. Pennsylvania* (1943) 319 U.S. 105 [87 L.Ed. 1292, 63 S.Ct 870, 146 A.L.R. 81]

In *Murdock,* Jehovah's Witnesses were convicted of violating a city ordinance which required all persons canvassing within the city to procure a license and pay a fee. The Supreme Court framed the issue before it as "a

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[6] California's Sales and Use Tax Law does provide a limited exemption from the sales and use tax for the serving of meals by religious organizations. (§ 6363.5.)

Several other states statutorily exempt religious organizations from sales and use taxes. (*See, e.g.,* Ark. Stat. Ann. § 26-52-401, subds. (1), (14); Fla. Stat. Ann. § 212.06, subd. (9); Iowa Code Ann. § 422.45, subd. (3); Mo. Ann. Stat § 144.030, subd. (19); Nev. Rev. Stat. § 372.325, subd. 5; N.J. Stat. Ann. § 54:32B-9, subd. (b)(1); N.Y. Tax Law, § 1116, subd. (a)(4); N.D. Cent. Code, § 57-39.2-04, subd. 4; Pa. Stat. Ann., tit. 72, § 7204, subd. (10).)

[7] The free exercise clause of the First Amendment provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]." The equivalent California constitutional provision states: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State." (Cal. Const., art 1, § 4.)

single issue – the constitutionality of an ordinance which as construed and applied requires religious colporteurs to pay a license tax as a condition to the pursuit of their activities." (*Id.* at p. 110 [87 L.Ed. at p. 1297].)

The Supreme Court observed: "The hand distribution of religious tracts is an age-old form of missionary evangelism – as old as the history of printing presses. It has been a potent force in various religious movements down through the years. This form of evangelism is utilized today on a large scale by various religious sects whose colporteurs carry the Gospel to thousands upon thousands of homes and seek through personal visitations to win adherents to their faith. It is more than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press." (*Id.* at pp. 108-109 [87 L.Ed. at p. 1296], fns. omitted.)

The Supreme Court discussed *Jones v. Opelika* (1942) 316 U.S. 584 [86 L.Ed. 1691, 62 S.Ct. 1231, 141 A.L.R. 514], which was reargued at the same time the *Murdock* case was argued. In the first *Opelika* opinion, the court had upheld convictions against Jehovah's Witnesses for violating a similar license ordinance because the Jehovah's Witnesses had used "ordinary commercial methods of sales of articles to raise propaganda funds." (*Id.* at p. 597 [86 L.Ed. at p. 1702].) The *Opelika* court had concluded it

was proper for the state to charge "reasonable fees for the privilege of canvassing." (*Ibid.*)[8] The *Murdock* court observed sometimes the determination whether an activity is "religious or purely commercial" is difficult to make; "[t]he distinction at times is vital." (*Murdock v. Pennsylvania, supra,* 319 U.S. at p. 110 [87 L.Ed. at p. 1297].)

"[T]he mere fact that religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him." (*Id.* at p. 111 [87 L.Ed. at p. 1297].)

In *Murdock,* the city argued the ordinance was valid because it was "nondiscriminatory." The court rejected

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[8] By memorandum opinion, the Supreme Court reversed the *Jones* decision "[f]or the reasons stated in the opinion of the court in [*Murdock*]." (*Jones v. Opelika* (1943) 319 U.S. 103 [87 L.Ed. 1290, 63 S.Ct. 890].)

this argument, stating: "A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position." (*Id.* at p. 115 [87 L.Ed. at pp. 1299-1300].) The *Murdock* court concluded the flat license tax before it, which was unrelated to receipts or income and which was "not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question," was an unconstitutional restraint on the free exercise of religion (*Id.* at pp. 113-114 [87 L.Ed. at p. 1299].)

Following *Murdock*, the Supreme Court, in *Follett v. McCormick* (1944) 321 U.S. 573 [88 L.Ed. 938, 64 S.Ct. 717, 192 A.L.R. 317], explained the *Murdock* holding was not restricted to itinerant preachers but also prohibited imposition of a flat license tax on Jehovah's Witnesses who earned their livelihood as evangelists or preachers in their home town. The *Follett* court stated: "Freedom of religion is not merely reserved for those with a long purse. Preachers of the more orthodox faiths are not engaged in commercial undertakings because they are dependent on their calling for a living. Whether needy or affluent, they avail themselves of the constitutional privilege of a 'free exercise' of their religion when they enter the pulpit to proclaim their faith. . . .A preacher has no less a claim to that privilege when he is not an itinerant." (*Id.* at pp. 576-577 [88 L.Ed. at pp. 940-941].)

Ministries argues there is no significant difference between hand distribution and mail distribution or

between printed religious matter and recorded religious matter; in either case the distribution is entitled to "as high a claim to constitutional protection as the more orthodox types" of spreading one's religious beliefs. (See *Murdock v. Pennsylvania, supra,* 319 U.S. at p. 110 [87 L.Ed. at p. 1297].) We agree. Evangelism, whether by "age-old" methods or by new technologies, is protected by the free exercise clause of the First Amendment. However, we disagree with Ministries's subsequent conclusion *Murdock* and *Follett* compel us to hold the sales and use taxes here unconstitutional.

Ministries argues since the funds raised from the sale of religious materials are used to produce other religious materials to further spread the gospel and "to remain a going concern" (see *Murdock v. Pennsylvania, supra,* 319 U.S. at p. 111 [87 L.Ed. at p. 1297]) and payment of sales and use taxes diminishes the amount of funds available for this evangelistic work, the taxes are an unconstitutional burden on Ministries's right "to [spread] their religious beliefs through the spoken and printed work" (*ibid.*) as guaranteed by the Constitution and stated in the *Murdock* and *Follett* cases. We disagree. Ministries has expanded the scope of those decisions beyond their holdings.

The holdings of *Murdock* and *Follett* were both limited to the constitutionality of a particular type of tax, a flat license tax which was unrelated to receipts, income or the administrative costs of a regulatory scheme and which acted as a prior restraint on the exercise of a constitutional right. The Supreme Court did not equate a financial burden in and of itself with an unconstitutional burden on the exercise of religion.

As the Supreme Court explained in *Follett* v. *McCormick, supra,* 321 U.S. at pages 577-578 [88 L.Ed. at p. 941]: "[We do] not mean that religious undertakings must be subsidized. The exemption from a license tax of a preacher who preaches or a parishioner who listens does not mean that either is free from all financial burdens of government, including taxes on income or property. We said as much in the Murdock case . . . ."

In *United States* v. *Lee* (1982) 455 U.S. 252 [71 L.Ed.2d 127, 102 S.Ct. 1051], the Supreme Court held an Amish employer could be constitutionally required to pay social security tax despite his religiously based belief forbidding the payment or receipt of social security benefits. The court acknowledged the "compulsory participation in the social security system interferes with [the Amishes'] free exercise rights," but nonetheless upheld that compulsory participation. (*Id,* at p. 257 [71 L.Ed.2d at p. 132].) The court reaffirmed its position that "[n]ot all burdens on religion are unconstitutional" and explained: "When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity." (*Id,* at pp. 257, 261 [71 L.Ed.2d at pp. 132, 134-135].) The court held a "state may justify a limitation on religious liberty by showing that it is essential to accomplish some overriding governmental interest." (*Id.* at pp. 257-258 [71 L.Ed.2d at

p. 132].)[9] The justifying governmental need in *Lee* was assuring mandatory and continuous participation in and contribution to the nation-wide social security system. (*Id.* at pp. 258-259 [71 L.Ed.2d at pp. 133-134].)

Subsequently, in *Minneapolis Star v. Minnesota Comm'r of Rev.* (1983) 460 U.S. 575, 586 [75 L.Ed.2d 295, 305, 103 S.Ct. 1365], (*Minneapolis Star*) the Supreme Court recognized a state's general interest in raising revenue is an important governmental interest; "that interest is critical to any government." In *Minneapolis Star,* the Supreme Court held that Minnesota's use, [sic] tax which taxed newspapers differently than other enterprises (taxing the paper and ink used in the paper, not just the finished product) and which singled out a handful of newspapers for this different treatment, was unconstitutional because it discriminated against the press. The court, however, in the course of its opinion, also explained: "our cases have consistently recognized that nondiscriminatory taxes on the receipts or income of newspapers would be permissible." (*Id.* at p. 587, fn. 9 [75 L.Ed.2d at p. 306]; accord

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[9] Compare *Lyng* v. *Northwest Indian Cemetery Protective Ass'n* (1988) 485 U.S. ___, ___ [99 L.Ed.2d 534, 547-548, 108 S.Ct. 1319, 1326], involving the government's right to build a road on National Forest land through a traditional Indian burial ground despite its potentially "devastating effects" on the practice of a particular religion. In a narrow interpretation of the free exercise clause, the Supreme Court rejected a requirement the government must demonstrate a compelling need for the road at that particular location to justify the burden on the practice of religion. The court stated: "The crucial word in the constitutional text is 'prohibit': 'For the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.' [Citation.]" (*Ibid.*)

Arkansas Writers' Project, Inc. v. Ragland (1987) 481 U.S. ___, ___ [95 L.Ed.2d 209, 219, 107 S.Ct. 1722, 1727].)[10]

The Supreme Court made this statement in response to an argument a generally applicable sales tax could never pass muster under the First Amendment. The newspapers cited in support of their argument the *Follett*, *Murdock*, and *Opelika* cases. The court responded: "Whatever the value of those cases as authority after *Breard*,[11]

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[10] In Arkansas Writers' Project, Inc. v. Ragland, supra, 481 U.S. ___, ___ [95 L.Ed.2d 209, 219, 107 S.Ct. 1722, 1727], the Supreme Court held Arkansas's sales tax scheme which taxed general interest magazines but exempted newspapers and religious, professional, trade and sports journals violated the First Amendment because it was discriminatory. The court found the selective taxation was "more disturbing" than the tax in *Minneapolis Star* because the Arkansas tax scheme determined tax status based entirely on the magazine's content. (*Ibid.*) The Supreme Court affirmed its *Minneapolis Star* position "that a genuinely nondiscriminatory tax on the receipts of newspapers would be constitutionally permissible." (*Ibid.*)

[11] In *Breard v. Alexandria* (1951) 341 U.S. 622 [95 L.Ed. 1233, 71 S.Ct. 920, 35 A.L.R.2d 335], the Supreme Court upheld a conviction against a door-to-door magazine subscription salesman for violating an ordinance prohibiting door-to-door solicitation of private residences without a prior request or invitation from the resident. The court stated "Subscriptions may be made by anyone interested in receiving the magazines without the annoyances of house-to-house canvassing. We think those communities that have found these methods of sale obnoxious may control them by ordinance. It would be, it seems to us, a misuse of the great guarantees of free speech and free press to use those guarantees to force a community to admit the solicitors of publications to the home premises of its residents." (*Id.* at pp. 644-645 [95 L.Ed. at p. 1249]; see also *Frisby v. Schultz* (1988) ___ U.S. ___ [56 U.S.L. Week 4785] (upholding an ordinance prohibiting picketing in front of a private residence against a First Amendment challenge).)

we think them distinguishable from a generally applicable sales tax. In each of those cases, the local government imposed a flat tax, unrelated to the receipts or income of the speaker or to the expenses of administering a valid regulatory scheme, as a *condition* of the right to speak. By imposing the tax as a condition of engaging in protected activity, the defendants in those cases imposed a form of prior restraint on speech, rendering the tax highly susceptible to constitutional challenge. [Citations.] In that regard, the cases cited by Star Tribune do not resemble a generally applicable sales tax." (*Minneapolis Star v. Minnesota Comm'r of Rev., supra,* 460 U.S. at p. 557, fn. 9 [75 L.Ed.2d at p. 306], italics in original.)

Relying on this reasoning in *Minneapolis Star,* the Second District, Division Seven of our Court of Appeal in *Institute in Basic Youth Conflicts, Inc. v. State Bd. of Equalization* (1985) 166 Cal.App.3d 1093 [213 Cal.Rptr. 98] (*Institute*), held the California use tax could be imposed on a nonprofit religious organization without offending the free exercise clause. *Institute* involved a nonprofit religious organization which conducted religious seminars across the country. The organization charged individuals one fee for its seminar and a separate fee for the printed syllabus. The organization also sold religious books and pamphlets, which were not directly related to the seminars, through the mail. The organization asserted California could not impose sales and use taxes on its sale of religious literature without offending the free exercise clause.

The Court of Appeal rejected this argument as to the use tax. Relying on *Minneapolis Star's* language concerning the constitutionality of a generally applicable sales

tax and distinguishing *Murdock* and *Follett*, the Court of Appeal concluded the use tax did not offend the free exercise clause because "[t]he tax in this case is not a flat tax and it is related to the receipts or income of the plaintiff." (*Id.* at p. 1105.) The court also pointed out the use tax is on the consumer, not the religious organization/seller; the religious organization/seller only collects the tax on behalf of the consumer. (*Id.* at p. 1106.)

The *Institute* court also relied on our Supreme Court's decision in *Watchtower B. & T. Soc. v. County of L.A.* (1947) 30 Cal.2d 426, 431 [182 P.2d 178], certiorari denied 332 U.S. 811, which had upheld an assessment of an ad valorem tax on religious literature stored in Los Angeles County. The California Supreme Court stated: "It has never been supposed that the property used in the exercise of the rights of freedom of press or religion is not subject to a uniform tax for revenue imposed upon all alike." (*Id.* at p. 430.)

The *Institute* court, however, did not similarly uphold imposition of the California sales tax because the Legislature had cast California's sales tax as a "privilege or occupation tax imposed upon the privilege of selling tangible personal property at retail." (*Institute in Basic Youth Conflicts, Inc. v. State Bd. of Equalization, supra,* 166 Cal.App.3d at p. 1105; § 6051.) The court explained: " . . . the method [the Legislature] has chosen, a privilege or occupation tax, is constitutionally infirm under the First Amendment when applied to respondent. As stated in *Murdock, supra,* 319 U.S. at page 115 . . . , '[t]he privilege in question exists apart from state authority. It is guaranteed the people by the Federal Constitution.' Accordingly, respondent cannot be taxed for the privilege

of doing that which it has already the right to do." (*Id.* at p. 1106.)

The Board in *Institute* argued California's interest in raising revenue justified the sales tax. The Court of Appeal was not persuaded. It concluded there was " 'an alternative means of achieving the same interest without raising concerns under the First Amendment,' " that is, the use tax which the Legislature had cast as "[a]n excise tax . . . on the storage, use, or other consumption in this state of tangible personal property" (§ 6201). (*Institute in Basic Youth Conflicts, Inc. v. State Bd. of Equalization, supra,* 166 Cal.App.3d at p. 1106.) We believe the *Institute* court erred when it relied on a privilege analysis to find the sales tax unconstitutional.

The United States Supreme Court, in *Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274 [51 L.Ed.2d 326, 97 S.Ct. 1076], rejected this privilege analysis for determining the constitutionality of a tax. Before the *Complete Auto* decision, courts had focused on whether a tax was a tax directly upon the "privilege" of engaging in a constitutionally protected activity (in which case it was invalid) or whether it was a tax merely on income earned (in which case it was valid). (Compare, e.g., *Railway Express Agency v. Virginia* (1954) 347 U.S. 359, 362, 369 [98 L.Ed. 757, 761-762, 74 S.Ct. 558] with *Railway Express Agency v. Virginia* (1959) 358 U.S. 434, 437-439 [3 L.Ed.2d 450, 453-454, 79 S.Ct. 411], where the Virginia Legislature recast an "annual license tax" levied on gross receipts for the "privilege of doing business in this State" to a "franchise tax" on "intangible property" in the form of a "going-concern" value as measured by gross receipts.) In

Complete Auto, the Supreme Court held the critical question was not whether the tax was on a "privilege," but whether the tax had a "forbidden effect." The Court explained: "There is no economic consequence that follows necessarily from the use of the particular words, 'privilege of doing business,' and a focus on that formalism merely obscures the question whether the tax produces a forbidden effect." (*Complete Auto Transit, Inc. v. Brady, supra,* 430 U.S. at p. 288 [51 L.Ed.2d at p. 337].)

The Court of Appeal in *Institute* misfocused on how the Legislature labeled the sales tax (a "privilege") and thereby improperly focused on formalism rather than on substance.[12] We believe the substantive effect of the sales tax on a religious organization produces no forbidden effect.

As the *Institute* court itself recognized, sales and use taxes are "complementary": " ' . . . [i]n substance, the sales and use tax laws constitute a double filter designed

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[12] Compare *Covenant Community Church v. Lowe* (Tenn. 1985) 698 S.W.2d 339 [58 A.L.R.4th 267], appeal dismissed 475 U.S. 1078, where the Tennessee Supreme Court upheld imposition of a 5 percent privilege tax on the occupancy of motel rooms on a church which rented motel rooms for conducting its services and providing religious instruction. The court explained: "The 5% privilege tax imposed upon a hotel and motel occupancy in Knox County is not a tax on tithes and offerings, as argued by Covenant, nor is it even an indirect tax on tithes and offerings. It is a tax upon the secular activity of occupying a hotel or motel room, and Covenant has freely chosen to occupy such rooms. The act does not bar or limit any religious practice and, thus, we conclude that the free exercise rights of appellant church have not been violated." (*Id.* at p. 341.)

to catch all transactions which result in tangible personal property joining the aggregate of capital assets within the state.' " (166 Cal.App.3d at pp. 1098, 1106.) This "double filter" produces one effect; not two. (Accord *Miller Bros. Co. v. Maryland* (1954) 347 U.S. 340, 344 [98 L.Ed. 744, 748, 74 S.Ct. 535], "The practical and legal effect of the Maryland statute . . . is to make the vendor liable for a use tax due from the purchaser. In economic consequence, it is identical with making him pay a sales tax.") That effect is not forbidden by the Constitution. The Supreme Court so concluded in *Minneapolis Star* where it stated a generally applicable sales tax is constitutionally permissible. (*Minneapolis Star v. Minnesota Comm'r of Rev., supra,* 460 U.S. at p. 587, fn. 9 [75 L.Ed.2d at pp. 305-306].) While *Minneapolis Star* involved newspapers sales rather than sales by a religious organization, we see no reason to distinguish between the two in this situation, particularly in light of the Supreme Court's comments in *Heffron v. Int'l Soc. for Krishna Consc.* (1981) 452 U.S. 640 [69 L.Ed.2d 298, 101 S.Ct. 2559].

In the *Krishna* case, the Supreme Court faced a challenge based on the free exercise clause to a Minnesota statute requiring a religious organization desiring to distribute and sell religious literature and to solicit donations at a state fair to conduct those activities only at an assigned location within the fairgrounds (i.e., at an assigned booth of which there were only a limited number available on a first come, first served basis). The Supreme Court recognized the Krishnas' oral and written dissemination of their religious views and doctrines was protected by the First Amendment and that this protection was not lost because the written materials sought to

be distributed were sold rather than given away or because the Krishnas solicited contributions or gifts in the course of propagating their faith (*Id.* at p. 647 [69 L.Ed.2d at p. 306]. The Supreme Court, however, went on to say: "It is also common ground, however, that the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. [Citations.] As the Minnesota Supreme Court recognized, the activities of [the Krishnas], like those of others protected by the First Amendment, are subject to reasonable time, place, and manner restrictions. [Citations.]" (*Ibid.*)

The Supreme Court upheld the state's authority to restrict the Krishnas to specified locations on the fairground based on the state's interest "in protecting the 'safety and convenience' of persons using a public forum." (*Id.* at 650 [69 L.Ed.2d at p. 308].) The Supreme Court concluded: "None of our cases suggest that the inclusion of peripatetic solicitation as part of a church ritual entitles church members to solicitation rights in a public forum superior to those of members of other religious groups that raise money but do not purport to ritualize the process. Nor the present purposes do religious organizations enjoy rights to communicate, distribute, and solicit on the fairgrounds superior to those of other organizations having social, political, or other ideological messages to proselytize. These nonreligious organizations seeking support for their activities are entitled to rights equal to those of religious groups to enter a public forum and spread their views, whether by soliciting funds or by distributing literature." (*Id.* at pp. 652-653 [69 L.Ed.2d at p. 309].)

By analogy, a religious organization which seeks to disseminate its religious message through sales of religious books, tapes and records should not enjoy rights to communicate and distribute their message superior to those of "other organizations having social, political, or other ideological messages to proselytize" (*ibid.*), such as newspapers, and therefore, like the "other organizations" should be subject to the sales tax.

Ministries nonetheless argues the sales tax acts as a prior restraint on the free exercise of religion because, under the statutory scheme, sellers are required to register before selling their products. (*See* §§ 6066-6074; Cal. Code Regs., tit. 18, § 1699.) This registration requirement, Ministries asserts, is no different from the flat license tax in *Murdock*. We disagree.

In *Murdock*, the Supreme Court explained: "The constitutional difference between such a regulatory measure and a tax on the exercise of a federal right has long been recognized. While a state may not exact a license tax for the privilege of carrying on interstate commerce [citations], it may, for example, exact a fee to defray the cost of purely local regulations in spite of the fact those regulations incidentally affect commerce. 'So long as they do not impede the free flow of commerce and are not made the subject of regulation by Congress, they are not forbidden.' [Citations.]" (*Murdock v. Commonwealth of Pennsylvania, supra*, 319 U.S. at p. 114, fn. 8 [87 L.Ed. at p. 1299].)

Here, the permit process is part of a regulatory scheme to facilitate the payment of sales taxes; it only

incidentally affects religion. No fee was charged for registering and the taxes were due regardless whether Ministries had preregistered. Contrary to Ministries's assertion, the registration requirement does not turn the sales tax into an unconstitutional prior restraint on the free exercise of religion.[13]

Nor does the sales tax restrain the dissemination of a religious message as did the license requirements in the *Murdock* line of cases. The sales tax is not imposed as a precondition of disseminating the message, but is imposed only after the message has been successfully disseminated, i.e., a sale has been made.

(3) (See fn. 14.),(2b) We conclude California's imposition of sales and use taxes on a religious organization

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[13] In support of their argument the sales tax produces a forbidden effect, Ministries quotes the following warning by the Supreme Court in *Murdock v. Pennsylvania, supra,* 319 U.S. at page 112 [87 L.Ed. at p. 1298]: "Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance."

Our California Supreme Court explained 50 years ago in *Watchtower B & T Soc. v. County of L.A., supra,* 30 Cal.2d at page 432: "While the power to tax may involve the power to destroy it is clear that no such result will be accomplished by the tax here imposed. The property here involved is required to bear only its share of the burden of the maintenance of the government which is for its protection equally with other property in Los Angeles County. The very liberty invoked is made realistic by the protection afforded by that government."

does not violate the free exercise clause of the First Amendment.[14]

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[14] Ministries also cites in support of its position an Attorney General opinion holding the imposition of sales and use taxes on educational materials supplied to students in a church-related school would violate the religion clauses of the First Amendment. (63 Ops.Cal.Atty.Gen. 69 (1980).) Ministries implies the Attorney General is bound by this opinion because the opinion has not been overruled or otherwise withdrawn by the Attorney General. The Board argues this opinion no longer represents the Attorney General's position. During oral argument, the Deputy Attorney General representing the Board informed the court he had obtained express authorization from his supervisors to argue against the earlier Attorney General opinion.

Initially, we note while it is true, as Ministries points out, that this opinion has not been overruled by the Attorney General, it is also true the Attorney General has not affirmed this position either; there have been no new opinions issued on this specific topic in the past eight years. Opinions of the Attorney General are issued in response to specific questions posed by state legislators, officers and agencies and are not issued gratuitously. (*See* Gov. Code, § 12519.) Second, opinions of the Attorney General are advisory only and do not carry the weight of law. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 870 [136 Cal.Rptr. 429].) We find the Attorney General's opinion unpersuasive in its reliance on a privilege analysis and in light of subsequent court decisions.

III

(4a) Ministries contends imposition of the use tax is unconstitutional because it offends the establishment clause of the First Amendment.[15]

"[F]or the men who wrote the Religion Clauses of the First Amendment the 'establishment' of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity." (*Walz v. Tax Commission* (1970) 397 U.S. 664, 668 [25 L.Ed. 697, 701, 90 S.Ct. 1409].) The Supreme Court has observed: "The language of the Religion Clauses of the First Amendment is at best opaque, particularly when compared with other portions of the Amendment. Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead they commanded that there should be 'no law *respecting* an establishment of religion.' A law may be one 'respecting' the forbidden objective while falling short of its total realization. A law 'respecting' the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not *establish* a state religion but nevertheless be one 'respecting' that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment." (*Lemon v. Kurtzman* (1971) 403 U.S.

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[15] The establishment clause of the First Amendment provides: "Congress shall make no law respecting an establishment of religion . . . ." The equivalent California constitutional provision states: "The Legislature shall make no law respecting an establishment of religion." (Cal. Const., art. I, § 4.)

602, 612 [29 L.Ed.2d 745, 755, 91 S.Ct. 2105], overruled on other grounds in *Mueller v. Allen* (1983) 463 U.S. 388 [77 L.Ed.2d 721, 103 S.Ct. 3062], italics in original.)

In *Lemon v. Kurtzman, supra,* at pages 612-613 [29 L.Ed.2d at p. 755], the Supreme Court announced three "tests" which a statute must pass to avoid the prohibition of the establishment clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, [citation]; finally, the statute must not foster 'an excessive government entanglement with religion.' "

Ministries does not contest the secular purpose of the sales and use taxes; they are clearly directed to the secular purpose of raising revenue.[16] Nor does Ministries, in its establishment clause argument, argue the taxes' principal or primary effect either advances or inhibits religion. The primary effect of the taxes is raising revenue. To the extent Ministries argues the taxes inhibit religion, that argument has been made and discussed in the context of the free exercise clause. Ministries focuses on the third test – excessive governmental entanglement.

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[16] Note *Mueller v. Allen, supra,* 463 U.S. at pages 394-395 [77 L.Ed.2d at p. 728], where the Supreme Court observed: "Under our prior decisions, governmental assistance programs have consistently survived this inquiry even when they have run afoul of other aspects of the *Lemon* framework. [Citations.] This reflects, at least in part, our reluctance to attribute unconstitutional motives to the States, particularly when a plausible secular purpose for the State's program may be discerned from the face of the statute."

The Supreme Court has recognized total separation between church and state "is not possible in an absolute sense"; "[s]ome relationship between government and religious organizations is inevitable." (*Lemon v. Kurtzman, supra,* 403 U.S. at p. 614 [29 L.Ed.2d at p. 756].) "Judicial caveats against entanglement must recognize that the line of separation, far from being a 'wall,' is a blurred indistinct, and variable barrier depending on all the circumstances of a particular relationship." (*Ibid.*)

The taxation area is one where there is necessarily some entanglement between church and state, whether the state imposes a tax or grants an exemption. (5) As the Supreme Court observed in *Walz v. Tax Commission, supra,* 397 U.S. 664, a case upholding New York's property tax exemption for religious organizations on property used exclusively for religious worship against an establishment clause challenge: "Determining that the legislative purpose of tax exemption is not aimed at establishing, sponsoring, or supporting religion does not end the inquiry, however. We must also be sure that the end result – the effect – is not an excessive government entanglement with religion. The test is inescapably one of degree. Either course, taxation of churches or exemption, occasions some degree of involvement with religion. Elimination of exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes.

"Granting tax exemptions to churches necessarily operates to afford an indirect economic benefit and also gives rise to some, but yet a lesser, involvement than

taxing them." (*Id.* at pp. 674-675 [25 L.Ed.2d at pp. 704-705].) The *Walz* court concluded: "In analyzing either alternative the questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement." (*Id.* at p. 675 [25 L.Ed.2d at p. 705].)

One commentator has observed: "Entanglement forms the basis of five first amendment doctrines: (1) In challenges to government action under the establishment clause, the action is unconstitutional if it creates excessive administrative entanglement between church and state. (2) Under the establishment clause, the action is also unconstitutional if it turns over traditionally governmental powers to religious institutions. (3) In establishment clause challenges, the challenged action is subjected to stricter scrutiny if it breeds religiously based political divisiveness. (4) In seeking a religiously based exemption from a law or regulation, a party *may* be able to prevail under the establishment clause by showing that enforcement would create excessive administrative entanglement. (5) Courts and other agencies of government may not inquire into pervasively religious issues." (Tribe, American Constitutional Law (1988) § 14-11, pp. 1226-1227, italics in original.)

(4b) Ministries claims there would be excessive governmental entanglement with its organization as a result of the difficulty of separating "sales" from "donations" and because it would be forced to hire "large staffs of people and go to very significant expense to deal with the government auditors, there would be a huge involvement of government auditors determining what motivations

were 'purely' religious (i.e., a pure donation), and to what extent the donor was motivated by the religious objective of receiving the religious material." This argument goes to excessive administrative entanglement.

Administrative entanglement has been found excessive where religious and state employees must work closely together to carry out the statutory scheme, when the state becomes involved in scrutinizing religious content or when enforcement requires government investigators to make on site inspections or engage in surveillance of the religious organization to ensure a secular purpose is served. (*See Aguilar v. Felton* (1985) 473 U.S. 402, 411, 414 [87 L.Ed.2d 290, 298-299, 300-301, 105 S.Ct. 3232]; *Larson v. Valente* (1982) 456 U.S. 228, 255 [72 L.Ed.2d 33, 54-55, 102 S.Ct. 1673]; *Tony & Susan Alamo Foundation v. Sec'y of Labor* (1985) 471 U.S. 290 [85 L.Ed.2d 278, 105 S.Ct. 1953]; American Constitutional Law, *supra*, at § 14-11, p. 1227.)

On its face, the statutory scheme does not result in this sort of administrative entanglement. The statutory scheme does not involve state employees in the day-to-day operations of Ministries. Contrary to Ministries's assertion, imposition of the sales and use taxes does not involve the government in questioning the religious nature of the materials involved nor the motivation for selling or purchasing the items since the materials are subject to the sales and use taxes regardless of content or motive. The critical question is not whether the materials are religious, but whether there is a sale or use, a question which involves only a secular matter. Nor does the statutory scheme require any on-site, continuing inspection. Contrary to Ministries's suggestion, the Sales and

Use Tax Law does not contemplate "official and continuing surveillance" (see *Walz v. Tax Commission, supra,* 397 U.S. at p. 675 [25 L.Ed.2d at p. 705]) by government auditors.

Nor does the record support Ministries's factual assertions. Ministries's assertion it was "impossible" to separate "sales" from "donations" rests largely on the testimony of a certified public accountant who conducted an audit of Ministries's books. This accountant, in his financial statement for Ministries, lumped "sales" and "contributions" together because, in hindsight, reviewing books he had not kept, he felt unable to accurately segregate Ministries's income into "sales" versus "donations." He testified part of this difficulty was due to people sending in more than the cost of a particular item (e.g., someone could send in $100 for a $5 album) and "the mail room – they would charge [all of] it to a donation." The accountant opined this difficulty in separating sales from donations could exist even when an order blank listing the price accompanied the request for the album. He stated, in his opinion, there would need to be "intensive training of the existing personnel [in the mail room] as to the difference between a donation and a purchase or what portion is a purchase and what portion is a donation and monitoring of that."

While this testimony tends to support Ministries's position, the trial court was not required to accept it, particularly when much of the accountant's testimony was based on the difficulties he encountered in resurrecting what had happened in the past rather than the difficulties in ascertaining the amount of sales versus

donations in the future. Moreover, there was other evidence indicating Ministries had a sophisticated accounting staff and had recently computerized its accounting and that Ministries in its own books and for purposes of obtaining a federal income tax exemption segregated "retail sales" from "donations."[17]

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[17] In its books, Ministries had at least six categories for donations ("crusade," "radio," "t.v.," "mission," "radio stations" and "other") and at least four categories for sales ("retail," "wholesale," "meeting & crusade," and "master charge"). Ministries's books also had a category for "sales Fgt. shipping."

In its 1980 application for recognition of an exemption from federal taxes under section 501(c)(3) of the Internal Revenue Code, Ministries stated it had " . . . four primary sources of financial support; [¶] (1) Donations are received by collections made during the religious service conducted three (3) times per week at the Church . . . and during special evangelistic services conducted worldwide in municipal auditoriums; and through contributions solicited from those attending services in Baton Rouge, Louisiana and the general public either by direct personal appeal, by radio and television programs, by appeals made in the monthly publication 'The Evangelist', or other direct mail solicitation. [¶] (2) Monies received from the sale of copyrighted religious material such as books, pamphlets, records and tapes. [¶] (3) Fees received from the sale of radio broadcast time to religious programmers sharing similar beliefs with the [Ministries]. [¶] (4) Gift annuities, bequests, donations in trust, and other gifts received through estate planning guidance and other fund-raising efforts established by [Ministries's] Stewardship Department."

In its 1981 filings for a federal income tax exemption, Ministries distinguished between "gifts, grants, and

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Neither Ministries's difficulty in establishing past "sales" from its books due to its past accounting practices nor the requirement of future record-keeping involve the government with an excessive entanglement with religion so as to violate the establishment clause.[18]

IV

(6a) Ministries contends the sales and uses taxes should not have been imposed here because Ministries was not a "retailer engaged in business in this state" within the meanings of sections 6013 and 6203 and Ministries did not have a sufficient nexus to California and

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contributions received" and "gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is not a business unrelated to the organizations's charitable, etc. purpose" for the years 1977 through 1980, distinguished between the "gifts, grants, and similar amounts received" and "gross sales minus returns and allowances" for 1981, and attached comments separately addressing "the sales of religious books, records, and tapes" and "donations."

[18] Compare *Tony & Susan Alamo Foundation v. Sec'y of Labor, supra,* 471 U.S. at pages 305-306 [85 L.Ed.2d at page 291], where the court noted the recordkeeping requirements of the Fair Labor Standards Act " . . . bear no resemblance to the kind of government surveillance the court has previously held to pose an intolerable risk of government entanglement with religion. The Establishment Clause does not exempt religious organizations from such secular governmental activity as fire inspections and building and zoning regulations [citation] and the recordkeeping requirements of the Fair Labor Standards Act, while perhaps more burdensome in terms of paperwork, are not significantly more intrusive into religious affairs." (Fns. omitted.)

therefore could not be taxed without offending the commerce clause. These issues involve determinations of factual matters (which Ministries argues insufficient evidence supports) but these issues were not raised by Ministries in its claim for a refund from the Board.

As a prerequisite for bringing a suit for a tax refund, the taxpayer must first present a claim for a refund to the Board. (§ 6932.) (7) Issues not raised in the claim for a refund may not be raised in a suit for a refund; the suit may be brought only "on the grounds set forth in the claim." (§ 6933; *Atari, Inc. v. State Bd. of Equalization* (1985) 170 Cal.App.3d 665, 672 [216 Cal.Rptr. 267]; *Duffy v. State Bd. of Equalization* (1984) 152 Cal.App.3d 1156, 1163 [199 Cal.Rptr. 886].) "The claim for refund thus frames and restricts the issues for litigation." (*American Alliance Ins. Co. v. State Bd. of Equalization* (1982) 134 Cal.App.3d 601, 609 [184 Cal.Rptr. 674, 30 A.L.R.4th 865].) "Failure to exhaust administrative remedies before the Board is a jurisdictional procedural defect which bars court action contesting imposition of tax [Citations.]" (*Duffy v. State Bd. of Equalization, supra,* 152 Cal.App.3d at p. 1163; *Aronoff v. Franchise Tax Board* (1963) 60 Cal.2d 177, 180-181 [32 Cal.Rptr. 1, 383 P.2d 409], app. dism. 375 U.S. 451 [11 L.Ed.2d 477, 84 S.Ct. 525].)

(8) As the court explained in *Atari, Inc. v. State Bd. of Equalization, supra,* 170 Cal.App.3d at page 673: "The rationale behind the rule of confining a complaint and trial to issues raised in the claim for refund is exhaustion of remedies. [Citation.] Prior to seeking relief from the superior court, a taxpayer must present matters of law and fact to the State Board of Equalization so that the Board may be afforded the opportunity to rectify any

mistake in tax collection. [Citation.] Such a rule prevents having an overworked court considers issues and remedies available through administrative channels."

The parties here stipulated: "Exhibits '1' and '2' to the complaint constituted the argument and evidence presented administratively on [Ministries's] Petition for Redetermination and Claim for Refund. The complaint herein (paragraph 12) bases [Ministries's] claim to Refund upon the grounds stated in exhibit '1' to the complaint alleging, 'In summary, it is alleged that California cannot impose a sales or use tax upon distribution of Bibles, religious books, religious tapes and other religious materials in the State of California because to do so would constitute an interference with the free exercise of religion as set forth in Article I, Section 4 of the California Constitution, and because it is a violation of the First Amendment to the Constitution of the United States, made applicable to the State of California under the provisions of the Fourteenth Amendment to the Constitution of the United States.' "

(6b) Ministries contends its statement in its claim for a refund asserting "California cannot constitutionally impose a sales tax" was sufficient to raise all constitutional issues. We disagree.

Section 6904 states, "[e]very claim shall be in writing and *shall state the specific grounds* upon which the claim is founded." (Italics added.) The only constitutional ground Ministries specified was the First Amendment; no other constitutional grounds were stated. To adopt Ministries's

position would require us to rewrite section 6904, replacing its requirement of "specific grounds," with a general denial of tax liability standard. We decline to do so.

Ministries contends it can raise these issues in this action because the Board "denied *any* exemption applied to the imposition of either the sales tax or the use tax collection liability" and, in its staff analysis of Ministries's petition for redetermination, stated "[e]xamination of petitioner's activities in California disclosed that petitioner has sufficient nexus in California to be required to register as a seller with the Board." Ministries asserts it thus raised the issues. This argument is without merit. These statements say nothing as to whether the issues were disputed; whether Ministries made any claims on these bases before the Board. Indeed, as to the nexus issue in particular, our review of the record indicates Ministries has overlooked another statement by the Board. In the decision and recommendations of the hearing officer, there is the following statement: "Counsel [for Ministries] does not argue nexus."

Ministries also argues it was not required to exhaust its administrative remedies on these issues because it would have been futile to do so and because "important questions of public policy are involved." Nothing in the record indicates it would have been futile to raise these issues. Nor do these particular issues raise "important questions of public policy," rather they raise factual questions, the determination of which is not a matter of "public policy" but a matter of evidence.

V

(9) Ministries contends the sales and use taxes offend the Ninth and Tenth Amendments of the federal Constitution.[19]

Ministries argues: "The protection of religious liberty was a keystone of the Constitution. The People reserved this area to themselves and did not grant power to the Government is this area. The following confirm this: (1) government generally is limited . . . . This is a government of the people who have 'inalienable rights endowed by their Creator';[20] (2) this area was of such importance to the People and the founding fathers . . . that it would not be an area reserved to the States, but rather would be reserved to the People; (3) the States were also limited by the people as to issues of religious freedom in States bills of rights, and (4) the fear of any implication that government could inhibit or impede these inalienable rights resulted in the Ninth and Tenth Amendments making it particularly clear.

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[19] These arguments were also not raised in Ministries's refund claim.

[20] Ministries refers to the following language attributed to The Annals of America, volume 3, page 185, H.A. Washington, II, pages 327-333, and quoted by Ministries as follows: "One of the main grievances of the anti-Federalists was the omission of a bill of rights from the Constitution. The framers had briefly discussed such an addition by rejected [*sic*] the idea for a number of reasons . . . A second, and even more pertinent objection was the belief that every man has certain natural

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"A use tax collection liability impeding the distribution of the Gospel to religious adherents is surely contrary to this history and reservation of this power over religious matters to the people under the Ninth and Tenth Amendments."

We are not surprised to see Ministries has not cited any authorities to support an argument based on the Ninth and Tenth Amendments; we find the argument singularly unpersuasive.

The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The United States Supreme court has explained: "The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exists alongside those fundamental rights specifically mentioned in the first eight constitutional amendments." (*Griswold v. Connecticut* (1965) 381 U.S. 479, 488 [14 L.Ed.2d 510, 517, 85 S.Ct. 1678], (conc. opn. Goldberg, J.).)

The Ninth Amendment has no application here because the rights at issue – free exercise of religion and

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inalienable rights that need not be enumerated. In contrast to the Federalist viewpoint, those who supported a list of fundamental rights believed that such an enumeration would provide a needed restraint on the powers of the government. In addition, the courts would have a basis for decisions when a person's rights were infringed upon . . . Thomas Jefferson . . . agreed with those who advocated a bill of rights."

separation of church and state – *are* enumerated in the Constitution, in the first two clauses of the First Amendment.

The Tenth Amendment provides: "The power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Like the Ninth Amendment, the Tenth Amendment has no application here. The power involved here – the power to tax – is inherently a power of the government, not of individual citizens, as the framers recognized by giving Congress the "power to lay and collect taxes." (U.S. Const., art. I, § 8.)

VI

Ministries contends "[e]vidence regarding the burdens resulting from imposition of the use tax collection liability" and "[l]etters from the Internal Revenue Service" were erroneously excluded. Ministries also asserts "[v]arious other trial court errors" occurred, including exclusion of testimony regarding the spiritual needs of physically handicapped and imprisoned adherents, the exclusion of testimony that much of the religious materials involved are not available commercially, exclusion of testimony regarding the Board's compulsion to register and pay taxes and the court's refusal to allow the pleadings to be amended.

Ministries does not specify what particular evidence or letters were excluded; does not cite where in the record this evidence was excluded, does not cite any authorities

in support of its claim of error and does not make any argument beyond its assertion error occurred. (10) "Where a point is merely asserted by appellant's counsel without any argument of or authority for the proposition, it is deemed to be without foundation and requires no discussion by the reviewing court. [Citation.]" (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [199 Cal.Rptr. 72].) We, therefore, decline to discuss these asserted errors.

Disposition

The judgment is affirmed.

Work, J., and Todd, J., concurred.